

LAW AND PUBLIC SAFETY

NEW JERSEY RACING COMMISSION

Off-Track Wagering and Account Wagering

Proposed Readoption: N.J.A.C. 13:74

Authorized By: New Jersey Racing Commission, Frank Zanzuccki, Executive Director

Authority: N.J.S.A. 5:5-30, N.J.S.A. 5:5-127, et seq.

Calendar Reference: See Summary below for explanation of exception to calendar requirement.

Proposal Number: PRN-2007-216

Submit written comments by September 14, 2007 to:

Michael Vukceovich, Deputy Director
New Jersey Racing Commission
P.O. Box 088, 140 E. Front St.
Trenton, New Jersey 08625-0088

The agency proposal follows:

Summary

Pursuant to N.J.S.A. 52:14B-5.1c, N.J.A.C. 13:74 is scheduled to expire on November 30, 2007. These rules have been reviewed pursuant to Executive Order No. 66 (1978) and the New Jersey Racing Commission finds them to continue to be reasonable, necessary, and effective for the purposes for which they were originally promulgated, namely, to effectuate the purposes of the Off-Track and Account Wagering Act, N.J.S.A. 5:5-12 et seq.

As of May 1, 2007, pursuant to the rules subject of this proposed

readoption, an account wagering license and three licenses (for the establishment of separate off-track wagering facilities) have been issued. Presently, the account wagering systems is operational, and there is one off-track wagering facility operating in this State.

N.J.A.C. 13:74 generally establishes the rules governing off-track wagering and account wagering. These rules also reference existing rules of the Commission. Those rules consist of N.J.A.C. 13:70, 13:71 and 13:72. N.J.A.C. 13:70, Horse Racing, consists of the Commission's rules governing the conduct of thoroughbred racing in this State. N.J.A.C. 13:71, Harness Racing, consists of the Commission's rules governing harness or standardbred racing in this State. N.J.A.C. 13:72, Casino Simulcasting, consists of the Commission's rules governing the conduct of casino simulcasting in this State. The Commission regulates casino simulcasting jointly with the New Jersey Casino Control Commission, whose counterpart rules concerning casino simulcasting appear at N.J.A.C. 19:55. The Commission also has rules, not referenced within these rules proposed for readoption, which appear at N.J.A.C. 13:73. These rules relate to workers' compensation insurance coverage for horse racing industry employees.

N.J.A.C. 13:74 contains 12 subchapters. Subchapter 1 sets forth definitions and generally provides that, except as provided therein and as otherwise provided in the Act, the rules of racing and conduct of pari-mutuel wagering in off-track wagering facilities, or in connection with account wagering, shall be subject to the rules of the Racing Commission. Because the conduct of

casino simulcasting is the subject of existing rules, the definition of “off-track wagering facility” within subchapter 1 specifically excludes from its meaning casino simulcasting facilities operated within the premises of an Atlantic City casino hotel.

Subchapter 2 addresses the application procedure for an initial one-year off-track wagering license, and the renewal of that license. N.J.A.C. 13:74-2.1 sets forth the prerequisites to and procedures for the grant of an initial off-track wagering license. Subsection (k) to this section provides, as required by the Act, that the Commission shall issue no more than 15 off-track wagering facility licenses.

N.J.A.C. 13:74-2.1 further provides that the New Jersey Sports and Exposition Authority (Authority), who is the eligible party for an initial off-track wagering license under the Act, is required to file an application for each proposed off-track wagering facility together with a non-refundable \$2,500 filing fee. In order for the application to be complete, this rule provides that certain prerequisites must be demonstrated by the Authority, including its compliance with minimum live race dates as required by the Act, and its entry into a participation agreement for off-track wagering with all eligible live race permit holders or successors in interest that held a valid race permit in 2000 (that is, in addition to the Authority as concerns Monmouth Park and the Meadowlands Racetrack, the permit holder or successor in interest that conducted live racing in 2000 at Garden State Park, the Freehold Raceway and the Atlantic City Race

Course), who themselves must meet certain prerequisites set forth in the Act including being in good standing with the Commission and State. Additionally, the Authority must demonstrate through its application that the requirements of the Act have been satisfied, including that the governing body of the local municipality within which the proposed off-track wagering facility is to be sited has not issued a resolution disapproving the proposed off-track wagering facility. The Authority, among other things, must in its application for an off-track wagering facility disclose the physical plan and location of the proposed facility, the number of jobs expected to be created and evidence that the facility complies with the Act's requirements. The Authority must also include with its application, and is required to maintain and keep current, written internal control procedures which shall set forth procedures to be implemented to effectively operate and manage the proposed off-track wagering facility and to maintain the integrity of wagering and proceeds from wagering. These internal control procedures, as required by N.J.A.C. 13:74-2.1(d), must also include a procedure to foster and insure that the off-track wagering licensee complies with the requirement of the Act creating a right of first refusal as to certain individuals for certain employment opportunities associated with off-track wagering.

Following receipt of an initial application for a specific off-track wagering facility, and a determination by the Racing Commission's Executive Director that it is complete, subsection (g) to N.J.A.C. 13:74-2.1 requires that the Commission within 45 days hold a public hearing at the cost of the Authority in the

municipality where the proposed off-track wagering facility is to be located. Subsection (h) to N.J.A.C. 13:74-2.1 requires that, between 30 days and 60 days following the conclusion of that public hearing, the Commission make a determination on the application considering various factors delineated in the rule. These include that the Authority has by clear and convincing evidence demonstrated that the grant of a license would not be inimical to the interests of the public and the horse racing industry in this State, that the participation agreement meets the requirements of the Act to the satisfaction of the Commission and Attorney General, and that the Authority has made reasonable efforts to address the reasonable concerns of the appropriate municipal planning board. Following the Commission's determination on the application, the determination is to be submitted to the Attorney General for review and approval, and the decision of the Attorney General shall be deemed a final decision. An issued off-track wagering license is required to set forth items such as the effective dates of the one-year license, the maximum operating hours for the off-track wagering facility, and any other conditions required by the Commission.

N.J.A.C. 13:74-2.2 sets forth the requirements for the one-year renewal of a previously issued off-track wagering license. It requires that the Authority, or its successor in interest, make application to the Commission for a renewal license accompanied by a non-refundable \$1,250 filing fee. A renewal license is to run for the period January 1 to December 31 of the same year. However, subsection (b) to this section, in order to achieve a consistent renewal date for each off-track

wagering license which may be granted, provides that an initial off-track wagering facility license granted pursuant to N.J.A.C. 13:74-2.1 may on a one-time basis be renewed to the last day of December of the year in question where that initial license expires prior to that time within the same year. Thus, for example, assuming an initial license is granted for the period August 5, 2007 to August 5, 2008, the Commission could renew that license to the end of December 2008. Thereafter, any renewal license for the facility in question would run from January 1 to December 31. This section also sets forth the requirements for the filing of an off-track wagering facility license renewal application. It requires that a hearing on the application be conducted by the Commission, at cost to the applicant, which hearing may be held at a properly and regularly convened public meeting of the Commission and at a location within the Commission's discretion. The hearing procedure, and the procedure for the issuance of a renewal license, are also set forth in this section.

Subchapter 3 addresses the application procedure for an initial one-year account wagering license, and the renewal of that license. N.J.A.C. 13:74-3.1 sets forth the prerequisites to and procedures for the grant of an initial off-track wagering license.

N.J.A.C. 13:74-3.1 requires that the Authority, who is the eligible party for an account wagering license under the Act, is required to file an application for such license with a non-refundable \$7,500 filing fee. In order for the application to be complete, this rule provides that certain prerequisites must be demonstrated

by the Authority, including its compliance with minimum live race dates as required by the Act, and its entry into a participation agreement for account wagering with all eligible live race permit holders or successors in interest that held a valid race permit in 2000 consisting of an aggregate 40 live race dates (that is, in addition to the Authority as concerns Monmouth Park and the Meadowlands Racetrack, the permit holder or successor in interest which conducted live racing at Garden State Park and the Freehold Raceway), who themselves must meet certain prerequisites set forth in the Act including being in good standing with the Commission and State. The Authority, among other things, must in its application for an account wagering license disclose its participation in the proposed account wagering system, the participation of other persons in the account wagering system, the particular plan, location and functions of the phone bank to be utilized in connection with account wagering, a detailed description of the proposed account wagering system, and the proposed maximum hours of operation for the account wagering system. The Authority must also include with its application, and is required to maintain and keep current, written internal control procedures setting forth procedures to be implemented to effectively operate and manage the racing and pari-mutuel aspects of the account wagering system. These procedures, as set forth in N.J.A.C. 13:74-3.1(d), must also include a procedure to foster and insure that the account wagering licensee complies with the requirement of the Act creating a right of first refusal as to certain individuals for certain employment opportunities associated with the account wagering

system.

Following receipt of an application for the account wagering license, and a determination by the Racing Commission's Executive Director that it is complete, subsection (g) to this rule requires that the Commission within 45 days hold a public hearing at the cost of the Authority, which may be conducted at a properly and regularly convened public meeting of the Commission at a location determined by the Commission. Subsection (h) to N.J.A.C. 13:74-3.1 requires that, between 30 and 60 days following the conclusion of the public hearing, that the Commission make a determination on the application considering various factors delineated in the rule. These include that the Authority has by clear and convincing evidence demonstrated that the grant of a license would not be inimical to the interests of the public and the horse racing industry in this State, and that the participation agreement meets the requirements of the Act to the satisfaction of the Commission and Attorney General. Following the Commission's determination on the application, the determination is to be submitted to the Attorney General for review and approval, and the decision of the Attorney General shall be deemed a final decision. The issued account wagering license is required to set forth items such as the effective dates of the one-year license, the methods of account wagering authorized by the issued license, and such other conditions as the Commission determines appropriate.

N.J.A.C. 13:74-3.2 sets forth the requirements for the one-year renewal of a previously issued account wagering license. It requires the account wagering

licensee, or its successor in interest, to make application to the Commission for a renewal license accompanied by a non-refundable \$5,000 filing fee. A renewal license is to run for the period January 1 to December 31 of the same year. However, subsection (b) to this section, in order to achieve a consistent renewal date for the account wagering license, off-track wagering licenses and live race permits issued by the Commission, provides that an initial account wagering license may on a one-time basis be renewed to the last day in December of the year in question where that initial license expires prior to that time within the same year. Thus, for example, where an initial license is granted for the period September 23, 2007 to September 23, 2008, the Commission could renew that license to the end of December 2008. This section sets forth the requirements for the application. It also sets forth a requirement that a hearing on the application be conducted by the Commission at cost to the applicant.

Subchapter 4, through N.J.A.C. 13:74-4.1, sets forth the prerequisites and procedures for the transfer or assignment of an off-track wagering license or the account wagering license. This can only be accomplished upon application to the Commission, the Commission's initiation and conduct of an investigation into the qualifications of the proposed transferee or assignee (at cost to it) and, among other things, the approval of the Attorney General. N.J.A.C. 13:74-4.2 sets forth the procedures which must be followed where the off-track wagering licensee or account wagering licensee seeks to designate another person or entity to conduct or operate an off-track wagering facility for it, or to act as an agent on its behalf.

This requires the approval of the Commission, and that a written contract or agreement be entered into between the parties. In such case, the person or entity that is proposed to operate the off-track wagering facility or account wagering system or facility must demonstrate to the Commission that it is qualified to hold a Commission issued license to engage in such activities.

Subchapter 5 concerns licensing, penalties for violations and the hearing process. N.J.A.C. 13:74-5.1 sets forth who must be licensed. N.J.A.C. 13:74-5.9 provides that the Commission or its Executive Director may impose conditions with regard to any license issued. N.J.A.C. 13:74-5.8 concerns standards of licensure, the conditions under which the Commission may grant, may refuse to grant or may refuse to renew a license, and license procedures. It provides that an applicant who is denied a license may appeal the license denial to the Commission in accordance with N.J.A.C. 13:74-5.12. N.J.A.C. 13:74-5.14 provides that reciprocity shall be given to the denial, revocation or suspension of any license by any other Racing Commission or similar authority.

N.J.A.C. 13:74-5.1 provides that, in addition to the off-track wagering licensee and account wagering licensee pursuant to subchapters 2 and 3, respectively, the following persons must be licensed by the Commission: a person to whom an off-track or account wagering license is to be assigned pursuant to N.J.A.C. 13:74-2.2; a party subject of a written agreement or contract pursuant to N.J.A.C. 13:73-3.2 concerning the operation of an off-track wagering facility or an account wagering system or facility; the hub facility required to be utilized by

the off-track wagering licensee and account wagering licensee by N.J.A.C. 13:74-8.1(b), its employees and supervisors; individuals employed at an off-track wagering facility and in connection with the account wagering system; and certain vendors to an off-track wagering facility and to the account wagering system unless an exemption is granted pursuant to N.J.A.C. 13:74-5.1(f). All licensees, as required by N.J.A.C. 13:74-5.6 must be at least 18 years of age. The non-refundable license fee for each class of license, which runs for a one year period from January 1 to December 31, ranges from \$10.00 to \$50.00 as set forth in the rule and is payable upon the filing of a license application. Where a person or vendor is licensed by the Commission pursuant to N.J.A.C. 13:70, 13:71 or 13:72, and certain conditions are satisfied as set forth in subsection (h) to N.J.A.C. 13:74-5.1 (including an endorsement of such license by the Commission), a license pursuant to this chapter need not be taken out by such person. N.J.A.C. 13:74-5.1 also imposes reporting requirements on the off-track wagering licensee and account wagering licensee where they do more than \$10,000 of business with any non-licensed vendor in any calendar year.

N.J.A.C. 13:74-5.4 provides that the Commission may request social security numbers to be furnished for use in determining an applicant's eligibility for licensure consistent with N.J.A.C. 13:71-7.37, which sets forth certain restrictions and limitations in such regard. N.J.A.C. 13:74.5.5 states that all licensees will be required, at the cost of each respective licensee, to be fingerprinted, photographed, and to pay for any related criminal history check.

N.J.A.C. 13:74-5.7 requires that all Commission licensed personnel employed at an off-track wagering facility, or at the premises of the account wagering licensee, wear a Commission approved identification tag of the appropriate licensee, and carry on their person their Commission authorized badge. Where no identification tag of the licensee has been approved for use by the Commission, such persons are required to wear their Commission authorized badge. For violations of this requirement, N.J.A.C. 13:74-5.7 sets forth penalties.

N.J.A.C. 13:74-5.10 sets forth the penalties, which include license suspension or revocation and a fine, which may be imposed for violations to this chapter. It provides that where a license is suspended or revoked, the licensee subject to the action shall be ordered not to appear at any premises subject to the jurisdiction of the Commission. Except as provided in N.J.A.C. 13:74-5.10(e), which allows for an immediate suspension of a license in limited circumstances related to an indictment on criminal charges, N.J.A.C. 13:74-5.12 provides that before a licensee is disciplined or suspended a hearing shall be held and provides that the costs incurred in connection with any hearing shall be paid by the licensee. N.J.A.C. 13:74-5.13 concerns the appeal procedure where a penalty has been issued or adopted in a final decision, and sets forth a procedure for the filing with the Executive Director a request seeking a stay of the imposition of a penalty imposed upon a licensee pending the disposition of any appeal.

Subchapter 6 concerns standards for off-track wagering facilities. N.J.A.C. 13:74-6.1 sets forth standards relating to square footage, amenity and safety

requirements to promote patron comfort and safety. It provides that the dining and handicapping facilities to be offered at an off-track wagering facility be approved by the Commission. It also requires that surveillance equipment be installed and maintained in certain areas of off-track wagering facilities, and that equipment or software be subject to a testing procedure before implementation in connection with off-track wagering. It requires that each off-track wagering facility establish a secure “money room,” and establish written procedures to accurately account for and track proceeds from the placement of a wager to delivery of the related funds to the money room and ultimate distribution of such funds as required by the Act. This subchapter also sets forth race-related information which off-track wagering facilities are required to make available to its patrons, which information is consistent with that generally available at New Jersey racetracks.

Subchapter 6 also contains rules concerning when tickets on pari-mutuel races may be sold at off-track wagering facilities, when refunds on such tickets may be issued, and conditions under which patrons may cancel purchased tickets. N.J.A.C. 13:74-6.8 provides that payment of wagers will be made only upon the presentation of appropriate pari-mutuel tickets and, in the absence of a regulation promulgated pursuant to N.J.A.C. 13:70 or 13:71, credit vouchers. N.J.A.C. 13:74-6.10 prohibits the off-track wagering licensee from charging any fee in connection with the placing of a wager, but does not prohibit a Commission approved fee from being charged for admission to an off-track wagering facility.

It also provides a mechanism for off-track wagering patrons to file written complaints with the Commission.

N.J.A.C. 13:74-6.14 prohibits persons under 18, unless accompanied by a parent or guardian in dining areas, from maintaining a presence at off-track wagering facilities. It also precludes persons under suspension or otherwise not in good standing with the Commission from maintaining a presence at off-track wagering facilities.

Subchapter 7 sets forth standards for the account wagering system. It includes a requirement, as set forth in N.J.A.C. 13:74.7.9, that equipment or software be subject to a testing procedure before implementation in connection with account wagering. N.J.A.C. 13:74-7.8 includes a requirement that the account wagering licensee utilize a single phone bank facility located in this State, unless the Commission approves the establishment of more than one such facility in this State, to receive and process all wagers placed by telephone from account holders through live operators or through an automated telephone wagering system. It is also requires that the phone bank facility, unless another location in this state is approved for such purpose by the Commission, perform other duties related to the account wagering system as set forth in N.J.A.C. 13:74-7.8. These duties include the processing of account wagers placed by computer or other electronic means approved by the Commission, the processing of account wagering applications, and the conduct of all administrative matters related to the maintenance of wagering accounts.

N.J.A.C. 13:74-7.1 sets forth the conditions precedent to the establishment of a wagering account. It requires, among other things, that an account holder be 18 years of age or older, a resident of New Jersey, and that the account be established in the name of a natural person only. It sets forth how and where applications for wagering accounts may be filed, and what notices and information must be supplied to the prospective account holder by the account wagering licensee. N.J.A.C. 13:74-7.2 requires that each application be reviewed by the account wagering licensee for compliance with the Act and this chapter, and sets forth the circumstances under which the account wagering licensee may reject an application, suspend an account, or close an account. Where an application is rejected, suspended for 48 hours or more, or closed by the account wagering licensee, although such actions constitute a final decision on the part of the account wagering licensee and are not subject to any appeal to the Commission, N.J.A.C. 13:74-7.2(d) requires that the account wagering licensee file a report disclosing such action with the Commission.

The various restrictions relating to the placing and acceptance of account wagers, including that account wagers may only be accepted from New Jersey residents, are set forth in N.J.A.C. 13:74-7.3. N.J.A.C. 13:74-7.10 sets forth the facilities at or through which the account wagering licensee may accept wagers from account holders consistent with its internal control procedures. Such wagers may be accepted by telephone, by computer, at the premises of an off-track wagering licensee, at the premises of a permitted racetrack facility or

successor in interest, and by such other electronic or other means and at such other premises upon application to and a determination by the Commission that such would be consistent with the Act and this chapter.

The manner and methods to credit a wagering account are contained in N.J.A.C. 13:74-7.4. While deposits to a wagering account may be made by an account holder through means including cash deposit, use of a credit or debit card, electronic transfer, etc., all deposited funds must be administratively processed by the account wagering licensee and satisfy any banker's or other clearance requirements before such funds may be made available for wagering. A wagering account may also be credited by the account wagering licensee for winning pari-mutuel wagers, refunded pari-mutuel tickets, and wagers properly cancelled pursuant to N.J.A.C. 13:74-7.6. The funds on deposit in a wagering account do not bear interest to the account holder, as provided in N.J.A.C. 13:74-7.4.

The manner and methods to debit a wagering account are contained in N.J.A.C. 13:74-7.5. A debit to an account can occur as a result of the account holder's placing of a wager or withdrawing funds from his or her account in accordance with the procedures set forth in this rule.

Subchapter 7 also contains a provision that, while the account wagering licensee has discretion in terms of what race information to make available to account holders, account holders who wager through their accounts and in person at off-track wagering facilities or permitted racetracks in this State shall have race

information made available on the same terms as other patrons of such facilities. All takeouts from wagers placed at an off-track wagering facility or permitted racetrack facility, utilizing a wagering account, are to be treated as if the wager were placed with cash. All other proceeds related to account wagering are to be disbursed in accord with N.J.A.C. 13:74-7.14.

N.J.A.C. 13:74-7.13 provides that the account wagering licensee may charge an administrative or access fee in connection with account wagers where placed by telephone through a live operator, but the type and amount of any such fee must be approved by the Commission. N.J.A.C. 13:74-7.15 provides standards for the closing of a dormant wagering account by the account wagering licensee, and for the disbursement of wagering account funds, upon and subject to notice to the account holder where a wagering account remains inactive for a continuous 24-month period. N.J.A.C. 13:74-7.16 sets forth a retention schedule for the account wagering licensee's maintenance and reporting of account wagering information, and sets forth a requirement that the account wagering licensee establish a dispute resolution procedure as part of its internal control procedures. This section further requires that an account holder who disputes any wagering or wagering related transaction has the right to review the appropriate record of his or her wagering transaction required to be maintained by the account wagering licensee. It also provides that the decision of the account wagering licensee as to any such dispute constitutes a final decision and shall not be the subject of any appeal to the Commission.

Subchapter 7, through N.J.A.C. 13:74-7.17, also provides a mechanism for account holders to file written or electronic complaints with the Commission. N.J.A.C. 13:74-7.18 precludes persons under suspension or otherwise not in good standing with the Commission from establishing or maintaining a wagering account.

Subchapter 8 sets forth certain requirements concerning the conduct of both off-track wagering and account wagering. N.J.A.C. 13:74-8.1 requires that the off-track and account wagering licensee each utilize a Commission licensed hub facility as defined in N.J.A.C. 13:74-1.1 and that, unless otherwise approved by the Commission, each use the same hub facility. This subchapter also sets forth the conditions for receipt of races from in-State and out-of-State races, which races may be offered for pari-mutuel wagering by each licensee. N.J.A.C. 13:74-8.6 provides that, with the prior approval of the Racing Commission and the concurrence of an out-of-State sending track or host track, an off-track wagering licensee or the account wagering licensee may form an interstate common pool with receiving tracks or entities in states other than the state in which the sending track is located. N.J.A.C. 13:74-8.4 and 8.5 provide for the commingling of wagers with in-State and out-of-State sending tracks and host tracks. N.J.A.C. 13:74-8.7 requires that agreements between an off-track wagering licensee and a sending track, or between the account wagering licensee and a host track upon which wagers are to be taken, be in writing.

Subchapter 9 concerns minimum standards for the in-State hub facility,

which facility is required to submit, maintain and keep current written internal control procedures as defined in N.J.A.C. 13:74-1.1 and 9.2. A requirement is also imposed upon the hub facility requiring that equipment and software be subject to a testing procedure before implementation in connection with off-track wagering or the account wagering system. It is further required by N.J.A.C. 13:74-9.1 that a Supervisor of Mutuels, a Racing Commission employee whose compensation is to be reimbursed to the Commission by the operator of the hub facility, be assigned to a Commission approved separate hub facility at all times when off-track wagering or account wagering is being conducted. However, where certain conditions consistent with integrity of operations are present and subject to the approval of the Commission, an existing in-State hub facility with an existing Supervisor of Mutuels may be utilized by the account wagering licensee and off-track wagering licensee.

N.J.A.C. 13:74-9.6 sets forth procedures to be followed in the event of an inability to transmit pari-mutuel information. N.J.A.C. 13:74-9.5 provides that overpays resulting from a totalisator error shall be borne by the vendor operator of the totalisator equipment causing the error, and N.J.A.C. 13:74-9.4 permits an operator of the totalisator which is required due to a malfunction of the totalisator to purchase "lost" tickets, to credit any losing tickets it is required to purchase to the extent of any winning tickets similarly purchased. Any "profit" from the tickets "lost" in the totalisator is to be paid to the Racing Commission and distributed as outstanding parimutuel ticket monies as set forth in the Act.

Subchapter 10 sets forth certain cost assessment formulas. N.J.A.C. 13:74-10.1, as required by the Act, sets forth a formula for racing costs as defined in N.J.A.C. 13:74-1.1. N.J.A.C. 13:74-10.2, as also required by the Act, sets forth a formula to annually assess permit holders an aggregate \$200,000 beginning in 2003 for costs related to prevention, education and treatment programs for the benefit of compulsive gambling. This subchapter also prohibits Racing Commission employees and appointees from providing any services to the account wagering licensee or off-track wagering licensee where those services are outside the scope of his or her duties on behalf of the Commission.

Racing costs are defined in N.J.A.C. 13:74-1.1 as the prospective and actual costs for all licensing, investigation, operation, regulation, supervision and enforcement activities and functions performed by the Commission. N.J.A.C. 13:74-10.1, as required by the Act, sets forth a formula to allocate these costs. As required by the Act, subsection (a) to this rule provides for the State Treasurer to certify racing costs annually. Subsection (b) to this rule, as provided in the Act, states that the Commission is to be reimbursed for racing costs from license fees, certain breakage monies and certain outstanding ticket monies. Subsection (c) to this rule, where these funds are not sufficient to reimburse the Commission for racing costs, as required by the Act sets forth a formula to assess the permit holders and successors in interest for the balance. Paragraphs (c) 1 through 5 set forth the specific allocation formula. Subsection (d) to this rule concerns the procedure for invoicing for racing costs, and for the payment of racing costs

following the issuance of a payment invoice by the Commission.

The formula set forth in N.J.A.C. 13:74-10.2, concerning costs to benefit compulsive gambling, provides that beginning July 3, 2003, the Commission, by written invoice and on an annual basis, shall assess each permit holder on an equal basis the sum of \$200,000 in the aggregate. Each permit holder will be required to make payment of its proportionate share within 15 days of the issuance of the invoice, which funds are to be deposited in the General Treasury no later than August 1 of the same year. These funds are to be appropriated by the Legislature to the Department of Health and Senior Services (DHSS), for use by that DHSS within the same fiscal year when collected. The funds are required to be used by the DHSS for prevention, education and treatment programs for compulsive gambling consistent with the Act.

Subchapter 11 concerns the ability of the Commission to access and maintain a presence at off-track wagering facilities and premises where account wagering is directly or indirectly conducted. N.J.A.C. 13:74-11.1 provides that the Commission and its representatives shall have unrestricted access to such facilities. N.J.A.C. 13:74-11.2 requires that the off-track wagering licensee provide the Commission, in furtherance of its regulatory responsibilities, with two designated parking spaces at each off-track wagering facility. A similar requirement is imposed upon the account wagering licensee as to the phone bank facility or facilities. A requirement is also imposed enabling the Commission in its discretion to require that the off-track wagering licensee, in furtherance of the

Commission's exercise of its regulatory duties, provide the Commission with reasonable office space at no more than four off-track wagering facilities within geographic regions selected by the Commission. A similar requirement, to provide reasonable office space to the Commission at each phone bank facility that may be established, is imposed upon the account wagering licensee.

Subchapter 12 provides that the Racing Commission rules at N.J.A.C. 13:74A, Self-exclusion List, are applicable to this chapter and incorporated into it by reference. N.J.A.C. 13:74A sets forth rules and procedures allowing for individuals to voluntarily place themselves on a list to be excluded from thoroughbred racetracks in this State, standardbred or harness racetracks in this State, and from opening or maintaining a wagering account with the account wagering license. As a result of the incorporation of Chapter 74A into this rule, any person who elects to place himself or herself on the Self-exclusion List is also excluded from off-track wagering facilities.

As the Commission has provided a 60-day comment period on this notice of proposal, this notice is excepted from the rulemaking calendar requirement pursuant to N.J.A.C. 1:30-3.3(a)5.

Social Impact

The establishment of off-track wagering and account wagering in this State has likely resulted in an increase in the number of persons who choose to participate in legalized horse race wagering in New Jersey. It has also resulted in a net increase in the amount of wagering on horse racing in this State. The total

number of off-track wagering facilities which will be applied for and established is unknown, although a maximum of 15 such facilities is authorized by the Act. As of May 1, 2007, there is one operating off-track wagering facility in the State, and the account wagering system is operational. In any event, any resulting social impact is due to the Legislative decision to authorize the described activities and not the promulgation or proposed readoption of these rules.

Regardless of the amount of increase in horse race wagering in this State, as a result of these license issuances, certain of the funds related to such wagering accrues to the benefit of horse breeding and development in New Jersey. Additionally, certain of the funds related to such wagering accrues to the benefit of backstretch benevolence, a program administered by the Commission which benefits backstretch workers at permitted racetracks and other facilities under the Commission's jurisdiction. Additionally, the Act provides that certain of the funds related to off-track and account wagering are to benefit live race purses and programs designed to aid the New Jersey horsemen. Thus, to the extent the readoption of these rules results in the continued generation of monies or additional monies for such purposes, there will be a beneficial social impact.

It is anticipated that the readoption of these rules will promote the economic future of the horse racing industry in this State and, consequently, the ancillary or service industries that support horse racing. The implementation of off-track wagering and account wagering has fostered the potential for increased commerce, employment and recreational opportunities in this State. It has also helped better

preserve the State's open spaces as, through the Act's allocation of certain of the funds derived through such wagering to live purses and breeding and development, the devotion of land for horse breeding and training is encouraged.

As with any expansion of legalized gambling, a potential does exist for negative social implications. The Racing Commission's experience concerning the implementation of off-track wagering demonstrates that, while some citizens support such initiations in their community, others oppose it on concerns including an increase in gambling, a potential for increased crime, and increased traffic. The Act, through its requirements, which include that the Commission regulate these areas, seeks to limit the potential for such negative implications. The Act also requires that the permit holders or successors in interest provide funding to be used by the New Jersey Department of Health and Senior Services for prevention, education and treatment programs for compulsive gamblers. The Commission believes that the requirements of the Act will reduce the potential for such negative social implications.

Economic Impact

It is impossible to estimate the total economic impact of these rules proposed for readoption. However, several economic consequences result from account wagering and off-track wagering.

The Authority and the parties to the participation agreement may chose to convert existing premises into off-track wagering facilities, as was done concerning the first and presently only operational off-track wagering facility in this State

(Vineland City), or they may build new facilities. In any event, such endeavors involve substantial costs both in construction and the purchase of new equipment, thereby benefiting the affected construction companies and equipment suppliers. Additionally, substantial costs will likely be incurred in connection with maintaining the various infrastructures necessary to the implementation of account wagering. These expenditures will also benefit the affected construction companies and equipment suppliers. Additionally, off-track wagering and account wagering results in an economic benefit to suppliers and vendors of the related facilities.

The Racing Commission believes that the implementation of off-track wagering and account wagering has a positive economic impact on the local municipalities where off-track wagering and account wagering related facilities are or may be situated. This is because the presence of such facilities results in additional employment opportunities and tax revenues.

The rules proposed for readoption should also benefit permit holders or successors in interest, as well as horsemen's groups. These entities directly share in revenue from off-track wagering and account wagering, and indirectly from increased purses that should result at New Jersey live race meetings. Additionally, as noted above, the rules proposed for readoption can be expected to generate funds for backstretch benevolence programs, as well as programs designed to assist compulsive gambling.

An economic impact will result to the account wagering licensee and off-

track wagering licensees as a result of the readoption of these rules. In order to establish and maintain an account wagering system and off-track wagering facilities, non-refundable filing fees must be submitted with each application for an initial or renewed license. Additionally, the costs associated with the hearings to be held following the submission of such applications is to be borne by the respective applicant. Further, each licensee is required to establish and maintain internal control procedures, and to maintain various records as defined in the rules related to their respective operations, which will require appropriate staffing and administrative costs.

The permit holders and successors in interests will also incur costs mandated by these rules, including the requirement that they pay racing regulated costs. Additionally, the implementation and expansion of off-track wagering and account wagering results in an increase in regulatory costs to the Commission, which are dependent on the scope of industry initiatives. However, these costs will be reduced consistent with the Act as a result of the revenues to be devoted to racing costs pursuant to N.J.A.C. 13:74-10.1(b). It is the remaining balance that will be allocated to the permit holders and successors in interest consistent with subsection (c) to that rule.

The account wagering licensee and off-track wagering licensee also incur costs related to the requirement of N.J.A.C. 13:74-11.2, which requires that limited parking and permanent office space in the Commission's discretion be provided to the Commission at locations designated within the rule. Additionally,

certain individuals and vendors who desire to work at an off-track wagering facility or in connection with the account wagering system are required to take out a Commission issued license, which dependant upon the class of license range in annual cost from \$10.00 to \$50.00.

The rules require that the off-track wagering licensees and account wagering licensee utilize an in-State hub facility, which results in costs to each. Although this requirement benefits the operator of the hub, the rules impose certain administrative and operational costs upon the hub operator. The operator of the hub facility would also be required to establish and maintain internal control procedures, as well as other records related to off-track wagering and account wagering, which will require appropriate staffing and administrative costs. These costs, including those concerning the regulatory costs of the Racing Commission Supervisor of Mutuels, may be reduced where an existing hub facility is utilized pursuant to N.J.A.C. 13:74-9.1(b).

Federal Standards Statement

A Federal standards analysis is not required because the rules proposed for readoption are authorized by the provisions of the Off-Track and Account Wagering Act, P.L. 2001, c. 199, and are not subject to any Federal requirements or standards.

Jobs Impact

As noted above, the rules proposed for readoption will result in the generation of jobs in the State. The opening of additional off-track wagering facilities, and the continuation of account wagering in the State, will create employment opportunities. The location of those employment opportunities is dependent upon the locations of these off-track wagering facilities, and possible other facilities that relate to the account wagering system infrastructure. In addition to the employment requirements at such facilities, job opportunities will also arise in terms of the construction of such facilities, and as concerns ancillary industries which will be needed to supply such facilities with goods and services.

Agriculture Industry Impact

The rules proposed for readoption should have a positive impact on agriculture. Since horse racing involves the participation of animals, which require farmland for breeding, development and training, the requirement of the Act that a portion of the funds derived from off-track and account wagering be devoted to purses for live racing in this State may indirectly result in an incentive to expand the devotion of land for such purposes. Additionally, as noted above, certain of the revenues resulting from such wagering is to be devoted to horse breeding and development in this State, which will have a direct beneficial impact.

Regulatory Flexibility Analysis

With respect to the permit holders, none of which qualifies as a small business under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq., as each

has over 100 full-time employees, no regulatory flexibility analysis is required. In any event, any impact on small businesses, which may result from these rules, is due to the Legislature's decision to authorize these activities, and not the readoption of these rules.

The rules set forth licensing requirements as concern vendors, who may operate as small businesses, who furnish goods and services to an off-track wagering facility or to the account wagering licensee. Unless an exemption is applied for and granted, vendors are required to be licensed where they maintain a presence at the premises of an off-track wagering facility or at the premises of the account wagering licensee, or where they supply racing related or pari-mutuel related equipment, supplies, information or data to the off-track wagering licensee or in connection with the account wagering system. These vendors would be required to file a petition with the Commission seeking an exemption on the basis that licensure is unnecessary, or submit a license application to secure a license. Additionally, in a significantly lesser number, other vendors who transact more than \$10,000 annually with the off-track wagering licensee or account wagering licensee might be required by the Commission to file an application for a vendor's license. However, where any vendor is already licensed by the Commission and it is determined that the vendors responsibilities to an existing Commission licensee are substantially similar to those to be performed in connection with off-track or account wagering, an endorsement to the existing license at no cost is the only requirement. These requirements are consistent with the policies of the Act and,

in addition to being amply warranted, are necessary to the integrity of off-track and account wagering. Costs to vendors are discussed in the Economic Impact above.

The rules would require a hub facility, or hub facilities if more than one is authorized by the Commission, to be licensed as a vendor. Presently, as of May 1, 2007, there is a single hub facility servicing all New Jersey racing outlets. All employees of any hub operator and those with oversight responsibilities as to the hub facility are required to apply for and receive a Commission issued license. A hub facility is required to establish and maintain internal control procedures, as well as records related to off-track and account wagering. A hub facility is also required to test equipment or software before implementation, and submit the results of such testing to the Commission in writing. It is also responsible for paying the entire compensation of the Racing Commission's Supervisors of Mutuels, where a hub facility is devoted to off-track wagering or account wagering. The rules require that a hub facility be located in New Jersey, and as is the present single hub facility, any hub facility seeking to operate in this State would likely qualify as a small business. Costs to hub facilities are discussed in the Economic Impact above.

A hub facility houses the totalisator and generates the reports that are to be utilized to reconcile simulcast wagers with sending or host tracks and calculate payments due to the Commission. It also form integral functions, as overseeing the operations of the totalisator and conducting manual merges of pari-mutuel

pool information in the event of a transmission failure. For these reasons, the licensing requirements and other controls imposed upon a hub facility are essential to maintaining the integrity of off-track and account wagering. It is equally important to insuring the fiscal soundness and technical reliability of off-track wagering and the account wagering system.

It is not anticipated that small businesses will have to employ professional services in order to comply with these rules.

Smart Growth Impact

The rules proposed for readoption will have no impact on the achievement of smart growth in the implementation of the State Development and Redevelopment Plan.

Full text of the rules proposed for readoption may be found in the New Jersey Administrative Code at N.J.A.C. 13:74.